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COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY - CIVIL DIVISION  
DOCKET NO. 02389

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GEOFFREY CROWTHER,

Plaintiff,

Vs.

CONSOLIDATED RAIL CORPORATION

and CSX TRANSPORTATION, INC.,

Defendants.

\*\*\*\*\*

DEPOSITION OF ROBERT SCOTT COWAH, M.D.

New England Orthopedic Surgeons

300 Birnie Avenue

Springfield, Massachusetts

December 16, 2008 5:20 p.m.

Jonathan P. Lodi

Court Reporter

<p>1 APPEARANCES:</p> <p>2</p> <p>3 Representing the Plaintiff:</p> <p>4 LAW OFFICE OF THOMAS J. JOYCE, III</p> <p>5 900 Centerton Road</p> <p>6 Mount Laurel, New Jersey 08054</p> <p>7 By: Thomas J. Joyce, III, Esq.</p> <p>8 856.914.0220</p> <p>9</p> <p>10 Representing the Defendants:</p> <p>11 BURNS, WHITE &amp; HICKTON, LLC</p> <p>12 Four Northshore Center</p> <p>13 106 Isabella Street</p> <p>14 Pittsburgh, PA 15212</p> <p>15 By: Stephen A. Hall, Esq.</p> <p>16 412.995.3000</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 2</p> <p>ROBERT SCOTT COWAN, M.D., Deponent, having first been duly sworn, deposes and states as follows:</p> <p>(Cowan Deposition Exhibits 1 - 6: Marked for identification.)</p> <p>EXAMINATION</p> <p>Q. (By Mr. Hall) Good evening, Doctor.</p> <p>My name is Steve Hall, and I'm a lawyer. I work for the Railroad, in a piece of litigation filed on behalf of Geoffrey Crowther, who's one of your former patients. And have you had your deposition taken before?</p> <p>A. Yes.</p> <p>Q. So you know the basic ground rules?</p> <p>A. I do.</p> <p>Q. Okay. I've marked, for the record, the deposition notice, Exhibit 1. I sent this to you, care of Mr. Joyce, Mr. Crowther's lawyer, just asking to bring a full copy of your file.</p> <p>Have you done that?</p> <p>A. Yes.</p> <p>Q. And we've marked your file as Exhibit 5, is that correct?</p> <p>A. Yes.</p> <p>Q. And before we had started, I had</p>																		
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 3</p> <p>INDEX</p> <p>WITNESS: ROBERT SCOTT COWAH, M.D.</p> <p>EXAMINATION BY: PAGE:</p> <table> <tr> <td>Mr. Hall</td> <td>4</td> </tr> <tr> <td>Mr. Joyce</td> <td>74</td> </tr> <tr> <td>Mr. Hall</td> <td>74</td> </tr> </table> <p>EXHIBITS: PAGE:</p> <table> <tr> <td>1 Notice of deposition</td> <td>4</td> </tr> <tr> <td>2 Dr. Cowan's report and CV</td> <td>4</td> </tr> <tr> <td>3 A one-page medical record</td> <td>4</td> </tr> <tr> <td>4 Copy of x-ray report</td> <td>4</td> </tr> <tr> <td>5 Dr. Cowan's file</td> <td>4</td> </tr> <tr> <td>6 A letter dated 4/11/08 from Mr. Joyce to Dr. Cowan</td> <td>4</td> </tr> </table> <p>marked Exhibit 2 as your report. Can you take a look at Exhibit 2 and just let me know -- and that's your report and your CV that was provided to me.</p> <p>A. Yes, that's accurate.</p> <p>Q. And Exhibit 6 has been marked as a letter and a job description that was sent to you by Mr. Joyce.</p> <p>Is that a fair and accurate copy of what you received from Mr. Joyce?</p> <p>A. It is.</p> <p>Q. Doctor, could you let me know where you're licensed to practice?</p> <p>A. Massachusetts.</p> <p>Q. Have you ever been subject to discipline at all?</p> <p>A. No.</p> <p>Q. And can you briefly go over your professional education?</p> <p>A. I went to Brown University, as an undergrad; graduated in 1982; got a master's degree at the University of Maryland, from '82 to '84, in anatomy; started med school in 1984 at Boston University, and finished up in 1988. I</p>	Mr. Hall	4	Mr. Joyce	74	Mr. Hall	74	1 Notice of deposition	4	2 Dr. Cowan's report and CV	4	3 A one-page medical record	4	4 Copy of x-ray report	4	5 Dr. Cowan's file	4	6 A letter dated 4/11/08 from Mr. Joyce to Dr. Cowan	4
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<p style="text-align: right;">Page 6</p> <p>went into an orthopedic residency program, starting with a surgical internship, at the St. Elizabeth's Hospital in Boston, and then the orthopedic portion was the Boston University affiliated hospitals. That ended in 1983. Afterwards I did a fellowship in spinal surgery at the New England Baptist Hospital.</p> <p><b>Q. And how long have you been at this practice?</b></p> <p>A. Fourteen years.</p> <p><b>Q. And are you board certified?</b></p> <p>A. Yes.</p> <p><b>Q. And what's your board in?</b></p> <p>A. Orthopedic surgery.</p> <p><b>Q. And when did you obtain certification?</b></p> <p>A. 1996.</p> <p><b>Q. Did you have to retake the test?</b></p> <p>A. I recertified ten years later.</p> <p><b>Q. And have you conducted any research in the area of repetitive stress injuries or cumulative trauma disorders?</b></p> <p>A. No.</p> <p><b>Q. And have you had a past experience as an expert witness?</b></p>	<p style="text-align: right;">Page 8</p> <p><b>Q. State court or Federal?</b></p> <p>A. State.</p> <p><b>Q. And do you recall the type of case that was?</b></p> <p>A. A woman fell off a porch.</p> <p><b>Q. And do you recall what the outcome of that case was?</b></p> <p>A. They found for the plaintiff.</p> <p><b>Q. Have you ever been excluded or not permitted to give your full opinions in any court?</b></p> <p>A. No.</p> <p><b>Q. Do you have any connection with the railroad industry?</b></p> <p>A. I don't.</p> <p><b>Q. Okay. So no friends, family, or any other connection?</b></p> <p>A. No.</p> <p><b>Q. And, Doctor, it's my understanding that you've authored a report in this case, dated November 9th, 2008, which is marked as Exhibit 2, is that correct?</b></p> <p>A. Yes.</p> <p><b>Q. And one of the things I noted was that -- or at least on the copy that I received -- is</b></p>
<p style="text-align: right;">Page 7</p> <p>A. Yes.</p> <p><b>Q. Can you tell me the type of cases that you've served in as an expert?</b></p> <p>A. Auto accident cases, medical malpractice cases, and Workers' Compensation cases.</p> <p><b>Q. Have you ever -- is this your first railroad case?</b></p> <p>A. Yes.</p> <p><b>Q. And the auto accident cases, was that primarily for your patient, or was that as a defense medical expert?</b></p> <p>A. Primarily for patients.</p> <p><b>Q. And the medical malpractice, is that for the defense?</b></p> <p>A. Yes.</p> <p><b>Q. And the Workers' Compensation would be probably for your patients?</b></p> <p>A. Yes.</p> <p><b>Q. And have you ever testified live, in court?</b></p> <p>A. Yes.</p> <p><b>Q. And where have you testified?</b></p> <p>A. In Springfield.</p>	<p style="text-align: right;">Page 9</p> <p><b>that it wasn't signed. Is your copy signed?</b></p> <p>A. My copy is not signed.</p> <p><b>Q. Is there anything -- have you had a chance to review the report in advance of your deposition?</b></p> <p>A. I did.</p> <p><b>Q. And did you meet with Mr. Joyce today?</b></p> <p>A. I did.</p> <p><b>Q. I'm sorry?</b></p> <p>A. I did.</p> <p><b>Q. And what did you guys talk about?</b></p> <p>A. We talked about this report. We talked about what I might expect from this deposition.</p> <p><b>Q. And what were you told in that regard?</b></p> <p>A. That we would discuss causality. That we would discuss, possibly, statutes of limitations. That we would discuss disability.</p> <p><b>Q. And what was the discussion about disability?</b></p> <p>A. The extent of disability for this patient.</p> <p><b>Q. And how about the statute of limitations?</b></p>

<p style="text-align: right;">Page 10</p> <p>1           A. Whether or not it had any bearing on 2           this case.</p> <p>3           <b>Q. And did it have any bearing in the 4           course of your conversations?</b></p> <p>5           A. No.</p> <p>6           <b>Q. What were you specifically told about 7           the statute of limitations?</b></p> <p>8           A. That there's a time period of two to 9           three years that a worker would have to file a 10          claim with respect to a given injury.</p> <p>11          <b>Q. Anything else?</b></p> <p>12          A. No.</p> <p>13          <b>Q. Was there a discussion about whether 14          or not Mr. Crowther had met that criteria, that he 15          filed a common claim?</b></p> <p>16          A. Yes, we did discuss that he had filed 17          a claim. And it was my opinion that that claim 18          was within the statute of limitations, based on 19          the knowledge I have of his injury.</p> <p>20          <b>Q. And have you reviewed any outside 21          medical records involving Mr. Crowther?</b></p> <p>22          A. No.</p> <p>23          <b>Q. And what was the discussion about 24          causality?</b></p>	<p style="text-align: right;">Page 12</p> <p>A. Yes.</p> <p><b>Q. How much were you paid?</b></p> <p>A. For the narrative report, \$500.</p> <p><b>Q. And, excuse me, are there any other drafts of this report?</b></p> <p>A. I don't recall any other drafts.</p> <p><b>Q. Did you receive any other communications from Mr. Joyce after you did your narrative report?</b></p> <p>A. I don't recall any other communications.</p> <p><b>Q. Can you tell me what you did to review, to come to your opinions and conclusions that are set forth in your report?</b></p> <p>A. I reviewed my office notes.</p> <p><b>Q. Did you do anything else?</b></p> <p>A. I reviewed the AMA guidelines to permanent impairment.</p> <p><b>Q. But you didn't review Mr. Crowther's deposition or any of the other file materials exchanged between the parties, is that accurate?</b></p> <p>A. That's accurate.</p> <p><b>Q. And you've not seen any other outside medical records from any other provider, is that</b></p>
<p style="text-align: right;">Page 11</p> <p>1           A. It largely centered on an injury that 2           would occur as a result of cumulative trauma, as 3           opposed to a single event.</p> <p>4           <b>Q. And was there any other discussion 5           about any other topics?</b></p> <p>6           A. No. Just, you know, what I've 7           discussed.</p> <p>8           <b>Q. And Exhibit 2, which is your report, 9           does it contain all of your opinions in this case?</b></p> <p>10          A. Yes.</p> <p>11          <b>Q. Were there any opinions that were not 12          in the report, that were discussed between you and 13          Mr. Joyce?</b></p> <p>14          A. No.</p> <p>15          <b>Q. And the fact that it's not signed, is 16          that signify to you, at all? I mean, do you stand 17          by what's written?</b></p> <p>18          A. I stand by it.</p> <p>19          <b>Q. Even under the -- and maybe this is 20          peculiar to Massachusetts, but under the pains and 21          penalties of perjury?</b></p> <p>22          A. Yes.</p> <p>23          <b>Q. And were you paid for the narrative 24          report?</b></p>	<p style="text-align: right;">Page 13</p> <p><b>true?</b></p> <p>A. I have not.</p> <p><b>Q. And in your report -- oh, and I'm sorry. Let me back up. And you didn't do any literature review?</b></p> <p>A. I did not.</p> <p><b>Q. And, sir, you'd agree that you're not an ergonomist; would you agree with that?</b></p> <p>A. I'd agree to that.</p> <p><b>Q. And you're not an occupational medicine doctor?</b></p> <p>A. I am not.</p> <p><b>Q. And occupation medicine doctor is a field of specialty in which those types of doctors focus on causality and work-related issues?</b></p> <p>A. Yes.</p> <p><b>Q. And would you agree that you're a treating physician and that your day-to-day job is to treat patients and conduct surgeries?</b></p> <p>A. Correct.</p> <p><b>Q. And that you don't do forensic determinations on causation on a routine basis?</b></p> <p>A. Not on a routine basis.</p> <p><b>Q. So you don't hold yourself out as a</b></p>

<p style="text-align: right;">Page 14</p> <p>1 <b>forensic causality expert, do you?</b></p> <p>2 A. I don't.</p> <p>3 Q. And you don't hold yourself out as a</p> <p>4 specialist in the area of occupationally-related</p> <p>5 injuries, is that true as well?</p> <p>6 A. Well, I treat a lot of occupational</p> <p>7 injuries. I have a sizable Worker's Comp. patient</p> <p>8 population, and so I'm asked my opinion on</p> <p>9 causality often. What constitutes an expert I</p> <p>10 suppose is variable.</p> <p>11 Q. Well, what percentage of your</p> <p>12 practice, for instance, do you devote to doing</p> <p>13 forensic determinations of causation?</p> <p>14 A. Well, it would be quite small. That</p> <p>15 would be, probably, five -- less than ten percent</p> <p>16 of what I do, five or ten percent.</p> <p>17 Q. Can you tell me what information, if</p> <p>18 any, you received about Mr. Crowther's job and his</p> <p>19 job duties at the Railroad?</p> <p>20 A. Mr. Crowther discussed with me his job</p> <p>21 duties as part of his intake history and physical</p> <p>22 examination.</p> <p>23 Q. And what did he tell you?</p> <p>24 A. Well, essentially what I wrote in my</p>	<p style="text-align: right;">Page 16</p> <p>A. No.</p> <p>Q. What, if anything, did you do to</p> <p>confirm with Mr. Crowther that this was correct</p> <p>information that was contained in Mr. Joyce's</p> <p>letter?</p> <p>A. Well, in the history obtained by Mr.</p> <p>Crowther, I, once again, was described what he did</p> <p>for work, which was important to my evaluation of</p> <p>his case and his condition. And to the extent</p> <p>that correlated with what doctor or -- I'm sorry</p> <p>-- with what Mr. Joyce said, I put it in a letter.</p> <p>Q. Which note would correlate or confirm</p> <p>the information that's in Mr. Joyce's letter?</p> <p>A. Well, it's not -- it's on an intake</p> <p>form that I don't have with me.</p> <p>Q. So there are file materials that are</p> <p>out there, that haven't been brought?</p> <p>A. Correct.</p> <p>Q. Do you have access to those or --</p> <p>A. Physically, no.</p> <p>Q. And so do you -- on this intake form,</p> <p>which I would ask to get a copy of, because we</p> <p>sent out authorizations for the release of medical</p> <p>records, to your practice, and I never got an</p>
<p style="text-align: right;">Page 15</p> <p>1 letter, which is that he was employed for</p> <p>2 thirty-one years as a track laborer; that he</p> <p>3 stated his duties were heavy manual labor,</p> <p>4 welding, repairing railroad tracks; and then</p> <p>5 described repetitive strenuous motion, vibration,</p> <p>6 awkward postures, heavy lifting, and loading.</p> <p>7 Q. Okay. Is that what Mr. Crowther told</p> <p>8 you; did he tell you, in his words, that he did</p> <p>9 heavy manual labor and was exposed to repetitive</p> <p>10 strenuous motion, vibration, awkward postures; I</p> <p>11 mean, were those his words?</p> <p>12 A. That was probably my interpretation of</p> <p>13 what he was telling me.</p> <p>14 Q. Did you lift any of the language from</p> <p>15 -- and I mean that in the nature in which it's</p> <p>16 intended. Did you borrow any of the language from</p> <p>17 Mr. Joyce's letter? because it looks like that</p> <p>18 very paragraph is --</p> <p>19 A. Yes. So I'm sure I did.</p> <p>20 Q. So the basic idea of the job duties</p> <p>21 was taken from Mr. Crowther's lawyer --</p> <p>22 MR. JOYCE: Objection.</p> <p>23 Q. (By Mr. Hall) -- in his letter, is</p> <p>24 that accurate?</p>	<p style="text-align: right;">Page 17</p> <p>intake form. I'm not sure why, but -- so it's</p> <p>your understanding that on there there would be</p> <p>information about his specific job duties?</p> <p>A. It's been a long time since I've seen</p> <p>it. But I think so.</p> <p>Q. When was the last time you think you</p> <p>saw it?</p> <p>A. Probably at the time of his</p> <p>evaluation. I'd have no reason to look at it</p> <p>prior to. That would be January 27th, 2006.</p> <p>Q. Well, can you tell me the specific</p> <p>things that he did as a welder that exposed him to</p> <p>repetitive strenuous motion?</p> <p>A. As a welder?</p> <p>Q. How about a heavy-duty manual -- I'm</p> <p>sorry. How about as a track laborer? I</p> <p>apologize.</p> <p>A. As a track laborer?</p> <p>Q. Yes. What were the specific job</p> <p>duties that you believe exposed him to repetitive</p> <p>strenuous motion or awkward postures or any of the</p> <p>other things that are listed in the second</p> <p>paragraph of your letter?</p> <p>A. Well, I would think any type of track</p>

<p>1 repair would be repetitive and strenuous.</p> <p>2 <b>Q. Have you ever seen track repair being</b></p> <p>3 <b>done?</b></p> <p>4 A. No, I haven't.</p> <p>5 <b>Q. And fair to say you haven't gone out</b></p> <p>6 <b>and looked at what Mr. Crowther did?</b></p> <p>7 A. No.</p> <p>8 <b>Q. And you've never examined any of his</b></p> <p>9 <b>work conditions?</b></p> <p>10 A. No.</p> <p>11 <b>Q. And Mr. Joyce hasn't provided you with</b></p> <p>12 <b>any videotape of a person repairing track?</b></p> <p>13 A. Correct.</p> <p>14 <b>Q. And you've not seen any sort of</b></p> <p>15 <b>scientific analysis of the exposure he had on his</b></p> <p>16 <b>job, right?</b></p> <p>17 A. Correct.</p> <p>18 <b>Q. And I think you previously stated that</b></p> <p>19 <b>the description of what he did for his work would</b></p> <p>20 <b>be important, and that you obtained that in your</b></p> <p>21 <b>history, and that it would be important to your</b></p> <p>22 <b>conclusion, is that correct, or your opinions?</b></p> <p>23 A. Correct.</p> <p>24 <b>Q. And so if in fact Mr. Crowther's job</b></p>	<p>Page 18</p> <p>work tasks, would be in a better position to determine causation?</p> <p>MR. JOYCE: Objection.</p> <p>THE WITNESS: Well, depending on who that person is. I mean, are you talking about a physician or --</p> <p><b>Q. (By Mr. Hall) How about a board certified occupational medicine doctor; would that person, after reviewing the job tasks, be in a better position?</b></p> <p>MR. JOYCE: As opposed to somebody that's treated the patient and examined him?</p> <p>Did you have somebody in mind or are you just speaking generally?</p> <p>MR. HALL: Do you have an objection?</p> <p>MR. JOYCE: Yes, I have an objection.</p> <p>MR. HALL: Okay. Then it's noted for the record. You can answer.</p> <p>THE WITNESS: Yes. I think that the -- that it would depend on that doctor's familiarity with the patients, in addition to his familiarity with the job.</p> <p><b>Q. (By Mr. Hall) Well, would you agree that a person who is board certified or trained in</b></p>
<p>1 <b>turned out not to be as described in Mr. Joyce's</b></p> <p>2 <b>letter, would you agree that that would affect the</b></p> <p>3 <b>outcome of your opinion?</b></p> <p>4 MR. JOYCE: Objection.</p> <p>5 THE WITNESS: If Mr. Crowther's job</p> <p>6 was considerably easier than described in</p> <p>7 either this letter or by the patient, yes.</p> <p>8 <b>Q. (By Mr. Hall) Okay. And so if Mr.</b></p> <p>9 <b>Crowther, for instance, worked at a safe and</b></p> <p>10 <b>comfortable pace, was able to take breaks, and was</b></p> <p>11 <b>not exposed to repetitive strenuous activity and</b></p> <p>12 <b>sustained awkward postures, then that could change</b></p> <p>13 <b>the outcome of your opinion, is that correct?</b></p> <p>14 A. It could be true, yes.</p> <p>15 <b>Q. And you would agree that you don't</b></p> <p>16 <b>know how much time of the day he spent doing any</b></p> <p>17 <b>activity at work, is that correct?</b></p> <p>18 A. That's correct.</p> <p>19 <b>Q. And you've never personally quantified</b></p> <p>20 <b>his exposure to any potential risk factors at</b></p> <p>21 <b>work, is that true?</b></p> <p>22 A. Correct.</p> <p>23 <b>Q. And would you agree that someone who</b></p> <p>24 <b>evaluated his actual work tasks, or representative</b></p>	<p>Page 19</p> <p>Page 21</p> <p>occupational medicine, who has reviewed videotape of representative job tasks, and who has been to railroad sites and has seen the work being done personally would be in a better position to determine whether or not those job duties caused or contributed to the development of a person's problems?</p> <p>MR. JOYCE: Objection.</p> <p><b>Q. (By Mr. Hall) Would you agree with that?</b></p> <p>A. If they'd examined the patient.</p> <p><b>Q. And is the examination of the patient</b></p> <p>-- why is that critical; wouldn't it be reasonable for a doctor to review -- to rely on your physical examination and notes?</p> <p>A. Yes, that would be reasonable.</p> <p><b>Q. And so if a board certified</b></p> <p>occupational medicine doctor reviewed your medical notes and those of your partners and actually did an analysis of the work duties that Mr. Crowther had done, you would agree that that person would be in a better position to determine causality?</p> <p>MR. JOYCE: Objection.</p> <p>THE WITNESS: Yes.</p>

<p>1           <b>Q. (By Mr. Hall) Is there any other 2 information that you received or reviewed in 3 regards to Mr. Crowther's job?</b></p> <p>4           A. No.</p> <p>5           <b>Q. Did you evaluate his avocational 6 activities in coming to your conclusions?</b></p> <p>7           A. No.</p> <p>8           <b>Q. And you'd agree, sir, that you're not 9 familiar with railroad operations?</b></p> <p>10           A. Yes.</p> <p>11           <b>Q. And you'd agree that in your letter, 12 in your narrative report, that you've not 13 suggested that there are any specific changes to 14 Mr. Crowther's job that has been scientifically 15 demonstrated or would otherwise be -- reasonably 16 anticipated to be preventive of his neck issues?</b></p> <p>17           MR. JOYCE: Objection. That's not the 18 purpose of Dr. Cowan's participation in 19 Mr. Crowther's case.</p> <p>20           THE WITNESS: I don't understand the 21 question.</p> <p>22           MR. JOYCE: He's not our liability 23 expert, Steve, and you know that. He's a 24 medical doctor, treating physician, surgeon,</p>	<p>Page 22</p> <p>1           <b>Q. And what are the risk factors for the 2 development of degenerative disk disease in the 3 neck?</b></p> <p>4           A. Genetic predisposition or neck- 5 strenuous manual labor.</p> <p>6           A. That's probably it.</p> <p>7           <b>Q. How about age; is age a risk factor?</b></p> <p>8           A. Relative. Everybody develops 9 degenerative changes over time, so I suppose so.</p> <p>10           <b>Q. Are there any other risk factors for 11 the development of degenerative disk disease or 12 arthritis?</b></p> <p>13           A. Deformity.</p> <p>14           <b>Q. Deformity? Anything else?</b></p> <p>15           A. That would be the bulk of it.</p> <p>16           <b>Q. And can you tell me which of the risk 17 factors you ruled out, if any?</b></p> <p>18           A. Deformity, trauma, genetics.</p> <p>19           <b>Q. You didn't rule out age?</b></p> <p>20           A. No. He's at an age where, certainly, 21 they're fairly predominant.</p> <p>22           <b>Q. Okay. I'm sorry. And I just want to 23 -- maybe I just didn't hear you, but he's at an 24 age where it's not unusual for him to have</b></p>
<p>1           <b>Q. (By Mr. Hall) Would you agree that 2 you've not given any opinions that there were any 3 specific changes to Mr. Crowther's job that could 4 have been done by the Railroad that would have 5 prevented his injury?</b></p> <p>6           A. Correct. I gave no such opinions.</p> <p>7           <b>Q. And you hold no such opinion as you 8 sit here today?</b></p> <p>9           A. I hold no such opinion.</p> <p>10           <b>Q. Okay. And, I'm sorry, I think we 11 covered you hadn't reviewed any of the literature 12 regarding the causes of Mr. Crowther's 13 degenerative disk disease, is that correct, in 14 preparation for your report?</b></p> <p>15           A. Correct.</p> <p>16           <b>Q. And do you hold yourself out as an 17 expert in the area of causes of degenerative 18 diseases of the neck?</b></p> <p>19           A. Yes.</p>	<p>Page 23</p> <p>1           <b>Q. And so we can agree that his age 2 contributed at least in part to the development of 3 his degenerative disk disease, is that correct?</b></p> <p>4           A. Yes.</p> <p>5           <b>Q. And if you take his job out of the 6 equation, he could have went on to develop the 7 exact same condition he had just -- back up.</b></p> <p>8           <b>If we take his job out of the 9 equation, isn't it true that he could have went on 10 to develop the same exact degenerative process in 11 his neck that resulted in his surgery?</b></p> <p>12           A. Yes.</p> <p>13           <b>Q. And is there any way to attribute 14 whether or not his surgery was due to a function 15 of age more than a function of his job?</b></p> <p>16           MR. JOYCE: Objection.</p> <p>17           THE WITNESS: Based on chronology of 18 symptoms.</p> <p>19           <b>Q. (By Mr. Hall) When did he begin to 20 develop signs or symptoms of degenerative disk 21 disease?</b></p> <p>22           A. His complaints of neck injury or arm</p>

<p style="text-align: right;">Page 26</p> <p>1 pain started just prior to evaluation by Dr. 2 Wenner for his thumb condition, which would have 3 been late in 2005.</p> <p>4 <b>Q. And so based on the fact that he began 5 to have neck pain, according to your file, in 6 2005, how is that significant? I'm sorry. Maybe 7 I'm not picking it up.</b></p> <p>8 A. Well, there comes a point in the 9 patient's degenerative disk process where it 10 becomes symptomatic. And in this case, that was 11 2005. The patient was fifty-four years of age. 12 He had been working on the Railroad, at that 13 point, for thirty-odd years. And can I 14 differentiate exactly whether it was age-related 15 or job-related? No. But it was my opinion that 16 it would be a combination of the two.</p> <p>17 <b>Q. Okay. So fifty/fifty?</b></p> <p>18 MR. JOYCE: Objection. There's no 19 reason for apportionment or allocation. 20 There's no requirement to do it. Note my 21 objection.</p> <p>22 <b>Q. (By Mr. Hall) Is it your opinion it 23 was fifty/fifty?</b></p> <p>24 A. Sure.</p>	<p>to -- I'm just trying to imagine stooped. Is that knees bent all the way down and lifting from the ground up; is that what you mean?</p> <p>A. No. Stooped just means bent at the waist.</p> <p><b>Q. Just bent at the waist. Okay. And it's not just being bent at the waist; it's lifting?</b></p> <p>A. Correct.</p> <p><b>Q. And do you have any information about how often Mr. Crowther would bend at his waist and do lifting?</b></p> <p>A. No.</p> <p><b>Q. Are there any other things that fall under the category of neck-strenuous manual labor?</b></p> <p>A. Labor requiring repetitive rotation of the neck.</p> <p><b>Q. And what does that mean?</b></p> <p>A. Repetitive rotations, rotating from one side to the other, lateral rotation.</p> <p><b>Q. Moving your neck left and right?</b></p> <p>A. Yes.</p> <p><b>Q. Up and down?</b></p>
<p style="text-align: right;">Page 27</p> <p>1 <b>Q. And is it unusual for someone in, say, 2 the fifth decade of life to have degenerative 3 changes in their neck as a result of age?</b></p> <p>4 A. No. It's fairly common.</p> <p>5 <b>Q. It's fairly common? Is it, like, 6 fifty, sixty, seventy, eighty percent of the 7 population who have degenerative changes?</b></p> <p>8 A. Sixty.</p> <p>9 <b>Q. Sixty percent, at the fifth decade of 10 life?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. And I think you said -- when I asked 13 you about the personal risk factors, I think you 14 said -- and I'm trying to check my notes -- but 15 manual neck labor; is that -- and I apologize. I 16 had manual labor, neck, stress.</b></p> <p>17 <b>What is manual labor that involves 18 stressing of the neck; can you describe that for 19 me?</b></p> <p>20 A. It would be anything done in a stooped 21 position. Anything requiring lifting from a 22 stooped position.</p> <p>23 <b>Q. And so -- and does it have to be 24 sustained a certain amount of time or does it have</b></p>	<p style="text-align: right;">Page 29</p> <p>A. Up and down's more covered with the first one, but --</p> <p><b>Q. Okay. And does the rotation of neck have to go to any certain degree in order to be problematic or --</b></p> <p>A. No, it just has to be sustained over years.</p> <p><b>Q. And when you say, "repetitive," I mean, what's the cycle have to be in order for it to be repetitive?</b></p> <p>A. I'm not sure I understand the question.</p> <p><b>Q. Okay. For it to qualify -- I mean, I can rotate my neck; I can look back and forth; but what's the cycle time for it to be classified as repetitive, in your opinion?</b></p> <p>A. I would say if you're rotating back and forth on a routine basis, four or five times a minute, over the course of a workday.</p> <p><b>Q. And do you have any specific information about Mr. Crowther --</b></p> <p>A. No.</p> <p><b>Q. Okay. -- in that regard?</b></p> <p>A. No.</p>

<p>1           <b>Q. Anything else that falls into the</b>  2           <b>category of repetitive manual neck labor?</b></p> <p>3           A. Well, any actual lifting with the  4           neck, which I'm not sure he would encounter.</p> <p>5           <b>Q. So as far as you know, that's not a</b>  6           <b>personal risk factor for him because he didn't</b>  7           <b>have lifting with his neck?</b></p> <p>8           A. He didn't describe any.</p> <p>9           <b>Q. Is that like putting water on your</b>  10           <b>head and walking with it?</b></p> <p>11           A. You know who does that are guys who  12           put in the windshields because they have to push  13           with their head and their hands at the same time.</p> <p>14           <b>Q. There's none of that, that you know</b>  15           <b>of, in his railroad --</b></p> <p>16           A. I don't know of any.</p> <p>17           <b>Q. Any other risk factors that we haven't</b>  18           <b>already talked about with regard to repetitive</b>  19           <b>neck or, I'm sorry, manual intensive neck, in that</b>  20           <b>area that we've been talking about?</b></p> <p>21           A. Neck-strenuous labor.</p> <p>22           <b>Q. Neck-strenuous labor. Thank you.</b></p> <p>23           A. No.</p> <p>24           <b>Q. And so to the extent that he was not</b></p>	<p>Page 30</p> <p>neck-strenuous labor is required to produce injury?</p> <p>A. It varies from person to person.</p> <p><b>Q. Is there any way to predict whether or</b> <b>not someone who does neck-strenuous labor is going</b> <b>to develop degenerative disk disease of the neck</b> <b>because of that neck-strenuous labor?</b></p> <p>A. No.</p> <p><b>Q. Is there any way to prevent the</b> <b>development of degenerative disk disease in the</b> <b>neck, irrespective of work?</b></p> <p>MR. JOYCE: Objection.</p> <p>THE WITNESS: No.</p> <p><b>Q. (By Mr. Hall) The aging process is</b> <b>pretty hard on the body and on our disks and our</b> <b>vertebrae, right?</b></p> <p>A. It can be.</p> <p><b>Q. It can be. And you'd agree, sir, that</b> <b>you don't hold yourself out as an expert in the</b> <b>work-related literature that deals with the</b> <b>degenerative disk disease; would you agree with</b> <b>that?</b></p> <p>MR. JOYCE: Objection.</p> <p>THE WITNESS: Work-related literature?</p>
<p>1           <b>exposed to neck-strenuous labor, that would be a</b>  2           <b>good thing, is that correct?</b></p> <p>3           A. Correct.</p> <p>4           <b>Q. And if a qualified person like an</b>  5           <b>ergonomist went out to review the job and analyze</b>  6           <b>the type of activities that were done by someone</b>  7           <b>like Mr. Crowther and they came to the conclusion</b>  8           <b>that the job does not contain tasks that contain</b>  9           <b>neck-strenuous labor, would that alter your</b>  10           <b>opinion?</b></p> <p>11           MR. JOYCE: Objection. Is it a  12           hypothetical; are you asking him to  13           speculate here?</p> <p>14           <b>Q. (By Mr. Hall) Would that change your</b>  15           <b>opinion?</b></p> <p>16           MR. JOYCE: Note my objection.</p> <p>17           THE WITNESS: It could.</p> <p>18           <b>Q. (By Mr. Hall) And so if in fact the</b>  19           <b>job did not contain a significant amount of</b>  20           <b>neck-strenuous labor, that would change your</b>  21           <b>opinion in fact, wouldn't it, sir?</b></p> <p>22           MR. JOYCE: Objection.</p> <p>23           THE WITNESS: It could.</p> <p>24           <b>Q. (By Mr. Hall) And how much</b></p>	<p>Page 31</p> <p>Page 33</p> <p><b>Q. (By Mr. Hall) Yes. The literature</b> <b>that -- the scientific literature that deals with</b> <b>work relatedness in the development of neck</b> <b>issues. Would you agree that you don't hold</b> <b>yourself out as an expert in that body of</b> <b>literature?</b></p> <p>MR. JOYCE: Objection.</p> <p>THE WITNESS: Correct.</p> <p><b>Q. (By Mr. Hall) Okay. And are you</b> <b>aware of any valid studies that have been done</b> <b>associating Mr. Crowther's work duties at the</b> <b>Railroad with the development of degenerative disk</b> <b>disease of the neck?</b></p> <p>A. Say that again.</p> <p><b>Q. Sure. Are you aware of any valid</b> <b>studies that have been associating Mr. Crowther's</b> <b>work duties with the development of degenerative</b> <b>disease in the neck?</b></p> <p>A. No.</p> <p><b>Q. And we can agree, sir, that there is</b> <b>no valid recognized dose response relationship</b> <b>between neck-strenuous labor and the development</b> <b>of degenerative disk disease in the neck, is that</b> <b>true?</b></p>

<p>1                   A. Correct.</p> <p>2                   <b>Q. And that's really what we're dealing</b>    3                   <b>with in Mr. Crowther's case, is he had</b>    4                   <b>degenerative disk disease in his neck, correct?</b></p> <p>5                   A. Right.</p> <p>6                   <b>Q. And you would agree that, in coming to</b>    7                   <b>a conclusion on causation, that it's important to</b>    8                   <b>review as much information as you can; would you</b>    9                   <b>agree with that?</b></p> <p>10                  A. Correct.</p> <p>11                  <b>Q. And did you ask Mr. Crowther if he had</b>    12                  <b>any issues in terms of trauma associated with his</b>    13                  <b>neck?</b></p> <p>14                  A. Yes.</p> <p>15                  <b>Q. And what did he tell you?</b></p> <p>16                  A. He did not.</p> <p>17                  <b>Q. And can we agree that once somebody</b>    18                  <b>develops degenerative disk disease of the neck --</b>    19                  <b>my neck just cracked. Sorry.</b></p> <p>20                  Can we agree that once somebody has    21                  degenerative disk disease in their neck and it    22                  becomes symptomatic that, really, any use of the    23                  neck or head can produce symptoms?</p> <p>24                  A. It can.</p>	<p>Page 34</p> <p>see that you came to any opinion that his job duties accelerated or aggravated Mr. Crowther's actual disease process, is that true?</p> <p>MR. JOYCE: Are you asking him whether his job aggravated or worsened the degenerative disk disease; is that your question?</p> <p>MR. HALL: You can answer the question.</p> <p>THE WITNESS: I could not say whether -- I could say that it rendered it more symptomatic. Is that what you're asking? I'm not sure what you're asking.</p> <p><b>Q. (By Mr. Hall) Okay. As you sit here today, you don't have an opinion, within a reasonable degree of medical certainty, and under the pains and penalties of perjury, as set forth in your report, that his job actually increased the disease process in his neck?</b></p> <p>MR. JOYCE: Objection.</p> <p>THE WITNESS: I did not render an opinion there, correct.</p> <p><b>Q. (By Mr. Hall) And you don't have such an opinion within a reasonable degree of medical</b></p>
<p>1                   <b>Q. And it doesn't necessarily have to be</b>    2                   <b>neck-strenuous labor in order to do that, right?</b></p> <p>3                   A. Correct.</p> <p>4                   <b>Q. It could just be simply turning your</b>    5                   <b>head could produce symptoms?</b></p> <p>6                   A. Yes.</p> <p>7                   <b>Q. And can we agree, sir, that there's a</b>    8                   <b>difference between the concept of activity-</b>    9                   <b>exacerbating symptoms with the concept of an</b>    10                  <b>actual increase in the disease process?</b></p> <p>11                  A. I'm sorry. Once more.</p> <p>12                  <b>Q. Yes. I'm just trying to figure out,</b>    13                  <b>can we agree that someone can be symptomatic,</b>    14                  <b>maybe they turned their head and they turned their</b>    15                  <b>neck and they produced the symptoms, that being</b>    16                  <b>one concept; and would you agree that that doesn't</b>    17                  <b>necessarily mean that the disease process is</b>    18                  <b>changing?</b></p> <p>19                  A. I agree with that.</p> <p>20                  <b>Q. So you can have symptoms without</b>    21                  <b>necessarily increasing the disease process,</b>    22                  <b>correct?</b></p> <p>23                  A. Correct.</p> <p>24                  <b>Q. And in reading your report, I don't</b></p>	<p>Page 35</p> <p>Page 37</p> <p>certainty and under the pains and penalties of perjury?</p> <p>A. Presently?</p> <p><b>Q. Yes.</b></p> <p>A. I do think his job duties aggravated his underlying cervical degenerative disk disease, yes.</p> <p><b>Q. Aggravated his symptoms or actually aggravated the underlying disease process; in other words, do you have any objective scientific evidence to show that his job duties at the Railroad actually increased the disease process?</b></p> <p>MR. JOYCE: He just said that's his opinion.</p> <p>THE WITNESS: That's my -- my opinion is that it did. But do I have repetitive MRIs showing a progression? No, I don't.</p> <p><b>Q. (By Mr. Hall) Okay. Do you have any diagnostic studies showing a comparison?</b></p> <p>A. No.</p> <p><b>Q. And do you have any objective scientific evidence to make that conclusion?</b></p> <p>A. I don't, no. It's my opinion.</p> <p><b>Q. And what's the basis for that opinion?</b></p>

<p style="text-align: right;">Page 38</p> <p>1      <b>You've not seen his job. I mean, what is the</b>    2      <b>basis for that opinion?</b></p> <p>3      A. I based that opinion, A, that he has a    4      degenerative disk disease process going on based    5      on MRIs that I was able to visualize; and, second,    6      that, in my opinion, the work that he described    7      were work duties that I considered to be    8      aggravating to a cervical degenerative disk    9      disease process.</p> <p>10     <b>Q. If that was true, then why didn't you</b>    11     <b>put that in your report?</b></p> <p>12     A. I did. Mr. Crowther sustained    13     cumulative micro-trauma to his neck as a result of    14     strenuous labor on the Railroad over thirty years.</p> <p>15     <b>Q. When I read that, I saw that that was</b>    16     <b>your opinion, that his job duties caused the</b>    17     <b>underlying degenerative disk disease.</b></p> <p>18     A. No.</p> <p>19     <b>Q. So that's not your opinion?</b></p> <p>20     A. No.</p> <p>21     <b>Q. So we can agree that his job duties</b>    22     <b>did not cause the underlying degenerative disk</b>    23     <b>disease?</b></p> <p>24     MR. JOYCE: Objection.</p>	<p>Q. And the MRI that you took was February    of 2006, is that right? Do you have a copy of    that?</p> <p>A. March. March 1, 2006. That's what I    have.</p> <p>Q. I have an exam date of 2/8/06. And it    was signed -- can I see where you're getting the    date from? You only sent him out once, is that    right?</p> <p>A. Correct.</p> <p>Q. For an MRI?</p> <p>A. Yes.</p> <p>Q. And that was Dr. Deborah Green?</p> <p>A. Yes.</p> <p>Q. So the exam date was 2/8 of '06. Can    we agree on that?</p> <p>A. Yes.</p> <p>Q. And do you have that in front of you,    the MRI? Can I take a look at it? This is the    only copy I have.</p> <p>A. I don't have a copy of it.</p> <p>Q. Do you mind if I walk around and we    can look at it together?</p> <p>MR. JOYCE: I have a copy, if you want</p>
<p style="text-align: right;">Page 39</p> <p>1      THE WITNESS: That's correct.</p> <p>2      <b>Q. (By Mr. Hall) And so, what this</b>    3      <b>paragraph is saying is that -- if I understand</b>    4      <b>correctly, based on what you just told me -- is</b>    5      <b>that his job duties may have accelerated the</b>    6      <b>otherwise non-work-related degenerative disk</b>    7      <b>disease, is that correct?</b></p> <p>8      A. Correct.</p> <p>9      <b>Q. So really, your opinion is based</b>    10     <b>solely on an aggravation of a pre-existing,</b>    11     <b>non-work-related injury of --</b></p> <p>12     MR. JOYCE: Objection. I think his    13     report also talked about it being a    14     contributing factor, along with an    15     aggravation of the condition.</p> <p>16     MR. HALL: You can answer the    17     question.</p> <p>18     THE WITNESS: Can you restate it?</p> <p>19     MR. HALL: Sure.</p> <p>20     <b>Q. (By Mr. Hall) Your opinion is that</b>    21     <b>his job duties at the Railroad aggravated or</b>    22     <b>worsened a pre-existing, non-work-related</b>    23     <b>condition, is that correct?</b></p> <p>24     A. That's correct.</p>	<p>Page 41</p> <p>it.</p> <p>MR. HALL: You have a copy of it?</p> <p>MR. JOYCE: Yes.</p> <p>Q. (By Mr. Hall) Okay. And we're    referring, for the record, to the MRI Center    2/8/06 MRI done of Mr. Crowther's cervical spine,    done by Dr. Deborah Green, correct?</p> <p>A. Correct.</p> <p>Q. And can you go through the findings    for me?</p> <p>A. Sure.</p> <p>Q. And maybe put it into laymen's terms    for me, if that's possible?</p> <p>A. Sure.</p> <p>Q. Okay. Maybe starting with C2-3, which    is the first finding, is that correct?</p> <p>A. Disk is of normal height, meaning that    he hadn't lost any height. It diminished signal    intensity, meaning that the disk was dry, no bulge    or herniation.</p> <p>Q. Okay. And is diminished signal    intensity or dryness something that's typical of    age-related --</p> <p>A. Yes.</p>

<p>1           <b>Q. -- degenerative disk disease?</b>  2            So in terms of his C2-3, that would be  3            fully consistent with age-related-only --  4            MR. JOYCE: Objection.  5           <b>Q. (By Mr. Hall) -- degenerative disk</b>  6           <b>disease?</b>  7            A. Yes.  8           <b>Q. Okay. And what about C3-4, which is</b>  9           <b>the next one down in the finding?</b>  10           A. C3-4 shows mild retrolisthesis,  11           meaning that the vertebrae didn't quite line up,  12           another degenerative finding. The disk had lost  13           both height and signal intensity and had a bulge  14           in it on the right side, as well as some bone  15           spurs.  16           <b>Q. And is that fully consistent with</b>  17           <b>age-related degenerative changes?</b>  18           A. Yes.  19           <b>Q. And what was the next part? There was</b>  20           <b>flattening of the dural sac.</b>  21           A. Correct.  22           <b>Q. And what does that mean?</b>  23           A. That means the bulge pushed in on the  24           sac housing the spinal cord, containing the spinal</p>	<p>Page 42</p> <p>changes?  A. Yes.  MR. JOYCE: Objection.  <b>Q. (By Mr. Hall) And how about C6-7?</b>  A. A little worse with the spur formation  actually causing mild impression on the spinal  cord itself and tighter nerve tunnel impingement.  <b>Q. Okay. But consistent with age?</b>  MR. JOYCE: Objection.  THE WITNESS: Yes.  <b>Q. (By Mr. Hall) And C7-T1?</b>  A. That's a normal disk.  <b>Q. Normal disk. So no problems there?</b>  A. Correct.  <b>Q. And what is the last paragraph there?</b>  There's right retrolisthesis at C3-4, C5-6 and  C6-7?  A. That was all mentioned in the body of  the report above.  <b>Q. And what is this mild endplate</b>  <b>degenerative changes; what does that mean?</b>  A. That's an arthritic finding.  <b>Q. Is that completely consistent with</b>  <b>age-related degenerative changes?</b></p>
<p>1           cord.  2           <b>Q. And there's moderate, right-lateral</b>  3           <b>recessed stenosis?</b>  4           A. Right. That's narrowing of the nerve  5           tunnels.  6           <b>Q. And bilateral, foraminal stenosis,</b>  7           <b>with proximal encroachment on C4-5 nerve roots?</b>  8           A. Same thing.  9           <b>Q. Same thing? And is that all</b>  10           <b>consistent with age-related, degenerative disk</b>  11           <b>disease?</b>  12           MR. JOYCE: Objection.  13           THE WITNESS: Yes.  14           <b>Q. (By Mr. Hall) And how about C4-5?</b>  15           A. Same sort of findings.  16           <b>Q. All completely consistent with</b>  17           <b>age-related changes?</b>  18           MR. JOYCE: Objection.  19           THE WITNESS: Yes.  20           <b>Q. (By Mr. Hall) And how about C5-6?</b>  21           A. Similar to C3-4. Once again, disk  22           bulging, narrowing of the spinal canal, narrowing  23           of the nerve tunnels.  24           <b>Q. Okay. All consistent with age-related</b></p>	<p>Page 43</p> <p>Page 45</p> <p>A. Yes.  <b>Q. And there was no problem with the</b>  <b>cord, is that correct, the spinal cord?</b>  A. The spinal cord didn't show any signal  change abnormalities, looked okay.  <b>Q. And the other structures were also</b>  <b>normal?</b>  A. Yes.  <b>Q. And so this entire MRI that was done</b>  <b>by you is completely consistent with age-related</b>  <b>changes, is that fair to say?</b>  MR. JOYCE: Objection.  THE WITNESS: Correct.  <b>Q. (By Mr. Hall) There's not anything on</b>  <b>here showing any specific trauma or any specific</b>  <b>micro-trauma, would you agree with that?</b>  A. There is no traumatic findings.  Micro-trauma refers to more, actually, arthritic-  type changes.  <b>Q. Okay. Let me ask you this, because</b>  <b>there were a couple notations I think you said at</b>  <b>C6-7 and C5-6, if I'm not mistaken, that showed</b>  <b>that there was a narrowing of where the nerves</b>  <b>went through or something was touching the nerves.</b></p>

<p>1                   A. Yes.</p> <p>2                   Q. Is that right?</p> <p>3                   A. That's correct.</p> <p>4                   Q. And whenever that happens in the neck, 5                   in this area of the neck, based on my laymen's 6                   understanding of the dermatome charts, it produces 7                   a single or sensation in the left hand, is that 8                   right?</p> <p>9                   A. It could.</p> <p>10                  Q. Well, let me ask you this: If there's 11                  a touching or if there's encroachment of the 12                  nerve, is it physiologically possible not to 13                  produce a symptom in the hand?</p> <p>14                  A. Yes.</p> <p>15                  Q. And how does it happen that when some 16                  encroachment turns into a neurological -- creates 17                  a neurological finding?</p> <p>18                  A. It's usually a matter of degree of 19                  encroachment.</p> <p>20                  Q. And when it's described in MRI or 21                  x-ray reports or diagnostic studies, is there a 22                  difference between, you know, small-, medium- or 23                  large-type of impingement or encroachment, or does 24                  "impingement" mean that it's being fully touched</p>	<p>Page 46</p> <p>that was taken of his neck.</p> <p>Q. (By Mr. Hall) Doctor, could you take a look at this with me? And I apologize. This is the only copy that I have. And I can make the representation to you that I didn't put any of this writing on here, okay? But if we're looking at the -- because it was at an x-ray done of the right shoulder and the cervical spine. Can we agree on that?</p> <p>A. Yes.</p> <p>Q. And the date of the x-ray was 10/8/2002?</p> <p>A. Yes.</p> <p>Q. Okay. And I can show you what's been marked as Exhibit 3.</p> <p>MR. JOYCE: Can I take a look at that, please?</p> <p>MR. HALL: Sure. That's from Dr. Baustin's records.</p> <p>Q. (By Mr. Hall) Okay. And it looks to me from -- and this is Exhibit -- Exhibit 3 is from Dr. Baustin's records. And it looks to me that at that point, Mr. Crowther was fifty-one years old and was having pain for weeks and months</p>
<p>1                  or compromised; can you, in your experience, tell 2                  me how that's read?</p> <p>3                  A. Usually the way it's described is 4                  there is impingement, and it's graded either mild, 5                  moderate, or severe.</p> <p>6                  Q. And can you have radiculopathy in your 7                  left hand or your left arm as a result of minor or 8                  minimal neuroforaminal impingement?</p> <p>9                  A. That's possible.</p> <p>10                 Q. And is that something that once it's 11                 impinged, once it's -- once something is hitting 12                 it, whether or not it's a bone spur, or if there's 13                 some narrowing or some arthritic changes in the 14                 area where the nerve runs -- that it -- can their 15                 symptoms go away and come back --</p> <p>16                 A. Yes.</p> <p>17                 Q. -- or do they stay?</p> <p>18                 A. They can go away and come back.</p> <p>19                 Q. Okay. I'm going to show you what's 20                 been marked as Exhibits 3 and 4. And Exhibit 4 -- 21                 and, I'm sorry, this is the only copy I have. 22                 It's got some hole punches on it.</p> <p>23                 MR. JOYCE: Can I take a look at that?</p> <p>24                 MR. HALL: Sure. It's the 2002 x-ray</p>	<p>Page 47</p> <p>Page 49</p> <p>involving his right shoulder, right arm and neck. And he was experiencing tingling sensations in his fingertips but no necessarily numbness or weakness, okay? And it looks like, to me, that Dr. Baustin, in his assessment on this particular date, says that Mr. Crowther's story suggests to him there was possible nerve root irritation at the most likely source, is that correct?</p> <p>A. As the most likely source.</p> <p>Q. As the most likely source. I'm sorry. I'm reading sideways. And that he was sending him out for an x-ray, is that right?</p> <p>A. Yes.</p> <p>Q. And this x-ray is taken four days after that visit. So I'm assuming that this is a -- it's probably reasonable to assume that that is the x-ray that he -- was sent out from Dr. Baustin.</p> <p>A. Yes.</p> <p>Q. And there were degenerative changes in -- noted in Mr. Crowther's spine at that time, is that correct?</p> <p>A. Correct.</p> <p>Q. And looking at the impressions that</p>

<p>1       were given from this particular x-ray, they're  2       extraordinarily similar to the MRI findings that  3       were done with you a few years later, is that  4       correct?</p> <p>5       MR. JOYCE: Objection.</p> <p>6       THE WITNESS: I wouldn't call them  7       extraordinarily similar. He's got some  8       degenerative disk changes on his x-ray. His  9       MRI is consistent with that, as well.</p> <p>10       Q. (By Mr. Hall) Okay. So these  11       degenerative changes are consistent in both the  12       MRI you had done, as well as this x-ray, is that  13       correct?</p> <p>14       A. Correct.</p> <p>15       Q. And in looking at these, can you see  16       if they're -- if there's any worsening of the  17       disease process?</p> <p>18       MR. JOYCE: Objection.</p> <p>19       THE WITNESS: No. It's impossible to  20       say.</p> <p>21       Q. (By Mr. Hall) Okay. Can we agree  22       that this particular x-ray that was done and sent  23       to Dr. Baustin indicated that there was  24       degenerative disk disease at C3-4, C5-6, C6-7, and</p>	<p>Page 50</p> <p>1       sometimes he gets tingling sensation in his  2       fingertips.</p> <p>3       A. Um-hum.</p> <p>4       Q. Would that account for the left-sided  5       numbness or weakness or tingling in the  6       fingertips?</p> <p>7       A. I don't know if he has any left-sided  8       tingling. I don't think he does.</p> <p>9       Q. Well, let me ask you this: Based on  10       just looking at the x-ray, would it surprise you  11       if someone had left-sided numbness or tingling  12       sensations in their hands, based upon the  13       degenerative changes and the foraminal impingement  14       that was suggested in this x-ray?</p> <p>15       MR. JOYCE: Objection.</p> <p>16       THE WITNESS: Would it surprise me,  17       no, if in fact somebody did.</p> <p>18       Q. (By Mr. Hall) Okay. And it's my  19       understanding that you've never seen these records  20       before?</p> <p>21       A. I've never seen those records before.</p> <p>22       Q. And had you seen these whenever you  23       were evaluating -- let me ask you this: Do these  24       records change your opinion as to the onset of his</p> <p>Page 51</p> <p>1       some neuroforaminal impingement suggested,  2       particularly at C5-6 on the left?</p> <p>3       A. That's what it says.</p> <p>4       Q. Okay. And that would -- and then it  5       says there's a statement that says, This does not  6       clearly account for his -- for the right-sided  7       symptoms, is that right?</p> <p>8       A. Correct.</p> <p>9       Q. And so is the impression that that  10       neuroforaminal impingement and the degenerative  11       disk disease that was there explain the left-sided  12       symptoms; is that a fair assessment?</p> <p>13       MR. JOYCE: Objection.</p> <p>14       THE WITNESS: I don't know if he had  15       any left-sided symptoms.</p> <p>16       Q. (By Mr. Hall) Based on the note that  17       was done by Dr. Baustin, he was noting that he  18       had --</p> <p>19       A. Right arm, shoulder, neck.</p> <p>20       Q. -- along his right arm and neck, that  21       he was having pain in his neck.</p> <p>22       A. Um-hum.</p> <p>23       Q. And that -- I'm sorry. It's hard for  24       me to read sideways. I apologize. And that</p> <p>Page 53</p> <p>1       problems with his neck?</p> <p>2       MR. JOYCE: Objection. He wasn't  3       symptomatic in 2003, on the left side.</p> <p>4       THE WITNESS: No. I would expect him  5       to have some degenerative changes in the  6       neck.</p> <p>7       Q. (By Mr. Hall) Okay. Let me ask you  8       this: If you sent out a patient for this x-ray,  9       would you tell them that it looks like there might  10       be some neck impingement that might be causing  11       left-sided neurological changes?</p> <p>12       MR. JOYCE: Objection.</p> <p>13       THE WITNESS: In a hypothetical, sure.</p> <p>14       Q. (By Mr. Hall) Yes, in a hypothetical,  15       you know, because based on your years of practice,  16       you know that if there's some impingement of the  17       nerve at these particular areas that it could  18       produce symptoms in the left side, correct?</p> <p>19       A. Correct.</p> <p>20       MR. JOYCE: Objection.</p> <p>21       Q. (By Mr. Hall) And that would be  22       reasonable for you to tell your patient; and in  23       fact, you would likely tell your patient that,  24       correct?</p>
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<p style="text-align: right;">Page 54</p> <p>1                   MR. JOYCE: Objection. Is this all 2                   hypothetical?</p> <p>3                   MR. HALL: It's a hypothetical 4                   situation, yes.</p> <p>5                   THE WITNESS: Yes.</p> <p>6                   <b>Q. (By Mr. Hall) If this patient came in 7                   to see you --</b></p> <p>8                   A. Hypothetically, yes.</p> <p>9                   <b>Q. And it's my understanding, in looking 10                  at your medical notes, that Mr. Crowther at one 11                  point -- you recommended that he have surgery and 12                  that he declined. Does that ring a bell?</b></p> <p>13                   A. I think so.</p> <p>14                   <b>Q. And do you know why he declined?</b></p> <p>15                   A. Let's look.</p> <p>16                   <b>Q. I think on page -- and I'm looking at 17                  Page 2 of your report. It says, "He had work- 18                  related financial constraints and deferred at that 19                  time."</b></p> <p>20                   A. Okay.</p> <p>21                   <b>Q. Did he tell you anything specific 22                  about what those financial constraints were?</b></p> <p>23                   A. I don't recall anything specific, no.</p> <p>24                   <b>Q. And let me ask you this: If he</b></p>	<p>necessarily.</p> <p><b>Q. Okay. And so --</b></p> <p>A. He already had it.</p> <p><b>Q. He already had it. But my understanding was you were concerned about it being aggravated or increased, correct?</b></p> <p>A. That's certainly a possibility, yes.</p> <p><b>Q. And despite it being a possibility, you have no record of informing him of that?</b></p> <p>A. I don't.</p> <p><b>Q. And I assume you don't have any written correspondence to the Railroad informing him of his degenerative disk disease in his neck and the potential for an exaggeration of that pre-existing injury?</b></p> <p>A. I don't believe I do.</p> <p><b>Q. And at that point, you didn't tell Mr. Crowther to do anything differently, is that correct?</b></p> <p>A. I don't believe so.</p> <p><b>Q. And do you have any evidence in your file that -- him working from March of '06, until he had his surgery in January of -- was it January of '07?</b></p>
<p style="text-align: right;">Page 55</p> <p>1                   <b>continued to work after that time -- do you know 2                   when that was, by the way? I apologize. Off the 3                   top of your head, do you know when you recommended 4                   surgery and he declined?</b></p> <p>5                   A. Let's see. I believe I offered it in 6                   March and he declined in March.</p> <p>7                   <b>Q. Of, I'm sorry, which year?</b></p> <p>8                   A. Of '06.</p> <p>9                   <b>Q. And he ended up having it in January 10                  of '07?</b></p> <p>11                   A. Yes.</p> <p>12                   <b>Q. And if you assume that he continued to 13                  go to work -- well, let's put it this way: In 14                  March of '06, did you put him on a work 15                  restriction?</b></p> <p>16                   A. There's no mention of a work 17                  restriction here.</p> <p>18                   <b>Q. Okay. And did you tell Mr. Crowther 19                  that if he went back to work doing his job at the 20                  Railroad, that he would likely increase his 21                  injury?</b></p> <p>22                   A. No, I don't believe I did.</p> <p>23                   <b>Q. Why not?</b></p> <p>24                   A. Well, I don't think he would,</p>	<p style="text-align: right;">Page 57</p> <p>A. The operation was -- yes, January of '07.</p> <p><b>Q. Do you have anything in your file or do you have an opinion as to whether or not he actually had an increase in the disease process in that time period?</b></p> <p>A. No. Basically it stayed the same, as best I could tell.</p> <p><b>Q. So as best you could tell, from March of 2006, until he had surgery in January of 2007, his job didn't produce any further injury, is that correct?</b></p> <p>A. Correct.</p> <p><b>Q. And going before March of 2006, do you have any evidence to determine whether or not his job actually aggravated or increased the disease process --</b></p> <p>MR. JOYCE: Objection.</p> <p><b>Q. (By Mr. Hall) -- from 2002 until 2006?</b></p> <p>MR. JOYCE: Objection.</p> <p>THE WITNESS: Yes.</p> <p><b>Q. (By Mr. Hall) What objective evidence do you have?</b></p>

<p style="text-align: right;">Page 58</p> <p>1           A. The development of the left arm 2           symptoms.</p> <p>3           <b>Q. And could Mr. Crowther have developed</b> 4           <b>left arm symptoms for reasons other than work?</b></p> <p>5           A. Yes.</p> <p>6           <b>Q. And couldn't it be a natural function</b> 7           <b>of age that could explain for his left-sided</b> 8           <b>neurological change?</b></p> <p>9           MR. JOYCE: Objection.</p> <p>10          THE WITNESS: It is possible.</p> <p>11          <b>Q. (By Mr. Hall) And can we agree that</b> 12          <b>at least in part, if not fifty/fifty I think is</b> 13          <b>what you said before, that age would have played a</b> 14          <b>significant role in the potential for the</b> 15          <b>development of neurological symptoms in the left</b> 16          <b>arm?</b></p> <p>17          MR. JOYCE: Objection.</p> <p>18          THE WITNESS: Age plays a significant 19          role as well.</p> <p>20          <b>Q. (By Mr. Hall) Okay. And do we know</b> 21          <b>which particular level and which particular</b> 22          <b>degenerative change resulted in the development of</b> 23          <b>left arm problems?</b></p> <p>24          A. In my opinion, the distribution of his</p>	<p style="text-align: right;">Page 60</p> <p>A. Well, the activities described as Mr. Crowther's job duties, in my opinion, would put him at risk.</p> <p><b>Q. And it's my understanding that Mr.</b> <b>Crowther, when he underwent the operation, that he</b> <b>had an uneventful post-operative care, is that</b> <b>correct?</b></p> <p>A. Correct.</p> <p><b>Q. And that he had excellent results in</b> <b>terms of his neck surgery?</b></p> <p>A. He did well.</p> <p><b>Q. And isn't it true that the literature</b> says that ninety-plus percent of people who have the type of surgery that Mr. Crowther had return to full functional capacity within one year?</p> <p>A. I'm not aware of that finding.</p> <p><b>Q. Are you aware of a finding that</b> ninety-plus percent of people who have the type of surgery that Mr. Crowther had have positive or good results?</p> <p>A. Yes.</p> <p><b>Q. Okay. And so you may not agree with</b> the one-year, but you might -- could it be longer than one year?</p>
<p style="text-align: right;">Page 59</p> <p>1          symptoms were most consistent with a C5-6 and a 2          C6-7 lesion.</p> <p>3          <b>Q. Which I think we can agree could be</b> 4          <b>completely as a result of age-related changes?</b></p> <p>5          MR. JOYCE: Objection.</p> <p>6          THE WITNESS: It could be age-related 7          changes.</p> <p>8          <b>Q. (By Mr. Hall) I'm sorry. My question</b> 9          <b>was: That could be -- age could completely</b> 10         <b>explain the symptoms, correct?</b></p> <p>11         MR. JOYCE: Objection.</p> <p>12         THE WITNESS: Age could completely 13         explain the symptoms, yes.</p> <p>14         <b>Q. (By Mr. Hall) And there's no</b> 15         <b>predisposing occupation for the development of</b> 16         <b>degenerative disk disease in the neck, would you</b> 17         <b>agree with that?</b></p> <p>18         A. No. I think certain people have a 19         risk for developing cervical degenerative problems 20         that result in more aggressive care. Certain 21         occupations are predisposing.</p> <p>22         <b>Q. And this being your first railroad</b> 23         <b>case, does that involve any occupation at the</b> 24         <b>Railroad?</b></p>	<p style="text-align: right;">Page 61</p> <p>A. Well, I just haven't seen data, return-to-work data, on people who have two levels of degenerative disk disease and subsequent surgeries, so it's hard to speculate.</p> <p><b>Q. Have you returned patients back to</b> <b>work after a two-level fusion?</b></p> <p>A. Sure.</p> <p><b>Q. Okay. In the past?</b></p> <p>A. Yes.</p> <p><b>Q. And did you recommend that Mr.</b> <b>Crowther go back to work?</b></p> <p>A. Let me just look. I didn't recommend he go back to work because he had too many concurrent issues.</p> <p><b>Q. Well, let me ask you this: If you</b> just take the neck alone, was that keeping him out of work?</p> <p>A. The neck alone, in my opinion, would not keep him out of any and all work. It certainly would not render him totally disabled.</p> <p><b>Q. So we can agree that -- could we agree</b> <b>that Mr. Crowther could return to his work at the</b> <b>Railroad after his operation?</b></p> <p>MR. JOYCE: Objection. Are you</p>

<p style="text-align: right;">Page 62</p> <p>1 talking about all work or railroad work?</p> <p>2 MR. HALL: Railroad work. If you just</p> <p>3 look at his neck --</p> <p>4 THE WITNESS: No. I understand the</p> <p>5 question.</p> <p>6 MR. HALL: Okay. I'm sorry. I</p> <p>7 apologize. I didn't mean to interrupt you.</p> <p>8 THE WITNESS: With regards to his</p> <p>9 neck, in conjunction with his age and based</p> <p>10 on my knowledge of his job duties, I felt he</p> <p>11 could not return to his previous job just</p> <p>12 with his neck.</p> <p>13 <b>Q. (By Mr. Hall) Okay. Is that stated</b></p> <p>14 <b>anywhere in your report?</b></p> <p>15 A. Well, it's rendered moot by the fact</p> <p>16 that he had the other -- the issue with his knees,</p> <p>17 and I didn't think he could do anything.</p> <p>18 <b>Q. Okay. Well -- and that's Dr. Lehman's</b></p> <p>19 <b>territory, right?</b></p> <p>20 A. That is correct.</p> <p>21 <b>Q. And you would defer to Dr. Lehman,</b></p> <p>22 <b>correct?</b></p> <p>23 A. On the specific issues with his knees,</p> <p>24 yes.</p>	<p style="text-align: right;">Page 64</p> <p>MR. JOYCE: I think that is misleading, though, because you know he never went back to work after that.</p> <p>MR. HALL: Well, if you listened to the question --</p> <p>MR. JOYCE: I listened to the question.</p> <p><b>Q. (By Mr. Hall) Okay. Is that a mistake?</b></p> <p>A. What note?</p> <p><b>Q. February 28th, 2007, Cowan/PAL. Right there.</b></p> <p>A. Okay. That must have been my mistake. If he didn't go back -- I thought he said he did, so that's what I wrote.</p> <p><b>Q. Okay. When is the soonest you would put somebody back, back to work, after a fusion like Mr. Crowther had?</b></p> <p>A. If it's a sedentary-duty job, they can go back whenever they want.</p> <p><b>Q. Like, the next few days?</b></p> <p>A. Well, a week, two weeks.</p> <p><b>Q. Okay. And how about, like, say, a medium-duty job; how long would the recovery</b></p>
<p style="text-align: right;">Page 63</p> <p>1 <b>Q. And so we can agree that Mr. Crowther, based just on his neck, could perform at least a light or sedentary-type job?</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. And maybe even medium-duty work?</b></p> <p>4 MR. JOYCE: Objection.</p> <p>5 THE WITNESS: Yes.</p> <p>6 <b>Q. (By Mr. Hall) And do you encourage</b></p> <p>7 <b>your patients to do that, to return to work?</b></p> <p>8 A. I do.</p> <p>9 <b>Q. Because one of the things I noted was</b></p> <p>10 <b>that six weeks post surgery, in one of your notes, you had him as being returned to work. Do you</b></p> <p>11 <b>recall that?</b></p> <p>12 A. If I can look at it.</p> <p>13 MR. JOYCE: That's incorrect. He did</p> <p>14 not return to work.</p> <p>15 MR. HALL: I just said he had him down</p> <p>16 as being returned to work.</p> <p>17 MR. JOYCE: You know that, Steve. He</p> <p>18 didn't go back to work after his surgery.</p> <p>19 There is a follow-up note that says he</p> <p>20 doesn't go back to work.</p> <p>21 MR. HALL: I'm asking him about it.</p>	<p style="text-align: right;">Page 65</p> <p>period need to be, in order for someone to be returned to a medium-duty-type job?</p> <p>A. It's more like six.</p> <p><b>Q. Six weeks?</b></p> <p>A. Six weeks.</p> <p><b>Q. And so if you thought he did a medium-duty job and he was six weeks post surgery, like in this note, that would be a reasonable return-to-work schedule?</b></p> <p>A. It's within the realm of possibility.</p> <p><b>Q. And based on the AMA guidelines, can you tell me how you did that?</b></p> <p>A. There's a chart in a book.</p> <p><b>Q. And are there subjective things you have to make, in order to figure out how to be on the chart?</b></p> <p>A. Not a lot. It basically states, for that category, if patients had surgery for a radiculopathy, that they fall into that particular DRE and that particular impairment rating.</p> <p><b>Q. And does the success of the particular surgery play a role in how it's evaluated on the AMA?</b></p> <p>A. It can.</p>

<p style="text-align: right;">Page 66</p> <p>1       <b>Q. How did you assess Mr. Crowther's</b>  2       <b>surgery, in terms of what you did with the AMA?</b></p> <p>3       A. Well, I assessed that he did well. He  4       didn't have persistent radicular findings,  5       weakness or numbness. But just based on the  6       surgery, that's how the AMA guideline worked for  7       that particular --</p> <p>8       <b>Q. And is this the best possible</b>  9       <b>impairment rating you can get, having neck</b>  10       <b>surgery?</b></p> <p>11       A. Best in what sense?</p> <p>12       <b>Q. Best in terms of the least amount of</b>  13       <b>disability.</b></p> <p>14       MR. JOYCE: Objection.</p> <p>15       <b>Q. (By Mr. Hall) I mean, is this the</b>  16       <b>best possible outcome he could have on the AMA</b>  17       <b>guidelines, based upon the fact that he had</b>  18       <b>surgery because of a radiculopathy?</b></p> <p>19       A. I believe so. I think it's eighteen  20       to twenty-three percent.</p> <p>21       <b>Q. So this is the best possible outcome</b>  22       <b>for him, based on the AMA guidelines, is that</b>  23       <b>correct?</b></p> <p>24       A. Correct.</p>	<p>A. Next July.</p> <p><b>Q. Oh, you saw him in July. I had -- I</b>  <b>apologize. So, like, a year and a half? Okay.</b></p> <p><b>And in terms Mr. Crowther's other</b>  <b>orthopedic conditions, you would defer to the</b>  <b>other doctors who treated him in your practice, is</b>  <b>that right?</b></p> <p>A. That's right.</p> <p><b>Q. And that would also include the</b>  <b>disability ratings, as well?</b></p> <p>A. Correct.</p> <p><b>Q. And so is it your understanding that</b>  <b>he had excellent results or good results of those</b>  <b>issues, as well?</b></p> <p>A. I actually don't have notations, in  regards to either his thumb or his knees, so I  can't really say how he's done with respect to  either of those.</p> <p><b>Q. And you just defer to those doctors on</b>  <b>that?</b></p> <p>A. I do.</p> <p><b>Q. Okay. Your last exam -- I know we</b>  <b>talked a little bit about it being a good surgical</b>  <b>result. Did Mr. Crowther regain his full range of</b></p>
<p style="text-align: right;">Page 67</p> <p>1       <b>Q. And people who have an eighteen-</b>  2       <b>percent, whole-body impairment rating can do</b>  3       <b>medium-type jobs?</b></p> <p>4       A. Sure.</p> <p>5       <b>Q. Could they do heavy-type jobs?</b></p> <p>6       A. Hypothetically, sure.</p> <p>7       <b>Q. Can you give me just a moment, and I</b>  8       <b>can review my notes?</b></p> <p>9       A. Sure.</p> <p>10       <b>Q. Thank you. Do you have an opinion on</b>  11       <b>Mr. Crowther's long-term prognosis, in terms of</b>  12       <b>his neck?</b></p> <p>13       A. He should do fine.</p> <p>14       <b>Q. When was the last time he went to see</b>  15       <b>you?</b></p> <p>16       A. Last seen by me July the 6th, 2007, I  believe.</p> <p>18       <b>Q. And everything was satisfactory at</b>  19       <b>that point?</b></p> <p>20       A. Yes.</p> <p>21       <b>Q. And you haven't seen him in almost two</b>  22       <b>years?</b></p> <p>23       A. It'll be two years next July.</p> <p>24       <b>Q. Next January?</b></p>	<p style="text-align: right;">Page 69</p> <p><b>motion?</b></p> <p>A. Of --</p> <p><b>Q. His neck. I'm sorry.</b></p> <p>A. Typically, no. Most patients who have  a fusion lose some range of motion, but it's not  of any functional consequence.</p> <p><b>Q. And is that consistent with -- I'm</b>  <b>sorry. Is that how Mr. Crowther's case turned out</b>  <b>to be?</b></p> <p>A. Yes.</p> <p><b>Q. So any limitation on how he can rotate</b>  <b>his neck has no functional consequence?</b></p> <p>A. Correct.</p> <p><b>Q. And one of the things I did want to</b>  <b>ask you about -- and I apologize to go back -- but</b>  <b>do you have any information about Mr. Crowther's</b>  <b>exposure to vibration to his neck?</b></p> <p>A. I don't have any specifics on that,  no.</p> <p><b>Q. I'm just trying to figure out -- do</b>  <b>you have any information to say that he was</b>  <b>exposed to vibration in his neck?</b></p> <p>A. Only what's in Mr. Joyce's note here.</p> <p><b>Q. And in order for a vibration to affect</b></p>

<p style="text-align: right;">Page 70</p> <p>1 the neck, I mean, would you have to have direct    2 contact with some sort of vibrating source?</p> <p>3 A. Yes.</p> <p>4 Q. And would the contact have to be on    5 the spine itself?</p> <p>6 A. No. It could travel through the arms    7 or legs.</p> <p>8 Q. And have you made any assessment of    9 his vibration exposure at all?</p> <p>10 A. No.</p> <p>11 Q. And are you aware of the studies that    12 indicate that exposure to whole body vibration is    13 not causally related to the development of    14 musculoskeletal disorders of the neck?</p> <p>15 MR. JOYCE: Objection.</p> <p>16 Q. (By Mr. Hall) Are you aware of that?</p> <p>17 A. I'm not aware of any study with    18 respect to that.</p> <p>19 Q. Is the National Institute of    20 Occupational Safety and Health an authoritative    21 body?</p> <p>22 A. Yes.</p> <p>23 Q. And if they indicated, in a    24 publication regarding work-relatedness, that</p>	<p>that qualifies as a restriction that has    to do with all of his impairments; neck,    arm, knees. Was that what you were speaking    of?</p> <p>MR. HALL: Well, any particular    medical restrictions with regard to his    neck, because I think we agreed before that    you would defer to -- the disability ratings    -- to the other doctors who treated him.</p> <p>THE WITNESS: Well --</p> <p>Q. (By Mr. Hall) Is he disabled because    of his neck?</p> <p>MR. JOYCE: He already answered that    question yes.</p> <p>THE WITNESS: Yes, he's disabled with    regards to his neck. As I said, I think he    could go back to some work, but not his    previous line of work and duties.</p> <p>Q. (By Mr. Hall) Okay. And if we were    trying to figure out which job he could go and do,    are there any medical restrictions?</p> <p>A. Yes.</p> <p>Q. Could he, for instance, lift up to    twenty-five pounds or --</p>
<p style="text-align: right;">Page 71</p> <p>1 whole-body vibration exposure has not been    2 causally related -- there's insufficient evidence    3 to formulate a causal association between    4 whole-body vibration and the development of    5 musculoskeletal disorders of the neck and    6 shoulder -- would you agree with them and defer to    7 them?</p> <p>8 MR. JOYCE: Objection.</p> <p>9 THE WITNESS: Yes.</p> <p>10 Q. (By Mr. Hall) And you don't have any    11 independent scientific studies showing that    12 exposure to vibration causes degenerative disk    13 disease in the neck, do you?</p> <p>14 A. No.</p> <p>15 Q. Are you aware of any at all?</p> <p>16 A. No.</p> <p>17 Q. In terms of -- okay. Are there any    18 current medical restrictions on Mr. Crowther?</p> <p>19 A. No.</p> <p>20 Q. So as far as you're concerned, in    21 terms of his neck, he has no medical restrictions?</p> <p>22 MR. JOYCE: Objection.</p> <p>23 THE WITNESS: Well, I said he was    24 totally permanently disabled. I suppose</p>	<p style="text-align: right;">Page 73</p> <p>A. Yes.</p> <p>Q. -- fifty pounds?</p> <p>A. I would -- you know, once again, I    haven't seen him for a year and a half. And    probably the better way to judge this would be    something like a functional capacity evaluation.    But I would say he would have lifting    restrictions. He would be best not doing overhead    work. He would be best not working in a stooped    position, and best not lifting below his knees or    crawling into tight, cramped spaces.</p> <p>Q. But in order to really make an    assessment, you need a functional capacity exam?</p> <p>A. I think it's helpful.</p> <p>Q. And you're not aware of Mr. Crowther    having a functional capacity exam, is that    correct?</p> <p>A. I am not.</p> <p>Q. And you didn't do a functional    capacity exam before doing your percentage or    calculation on his impairment, is that correct?</p> <p>A. No. It wouldn't have figured in.</p> <p>MR. HALL: Okay. I don't think I have    any other questions.</p>

	<p>Page 74</p> <p>1                   MR. JOYCE: Just real briefly.    2                   EXAMINATION    3                   <b>Q. (By Mr. Joyce) Dr. Cowan, in your</b>  <b>opinion, Geoff's job as a trackman at the Railroad</b>  <b>was a contributing factor in the development of</b>  <b>his degenerative disk disease in his neck?</b>    4                   MR. HALL: Objection.    5                   THE WITNESS: Yes.    6                   <b>Q. (By Mr. Joyce) In your opinion,</b>  <b>Geoff's job as a trackman at the Railroad</b>  <b>aggravated and worsened his degenerative disk</b>  <b>disease in his neck?</b>    7                   A. Yes.    8                   MR. HALL: Objection.    9                   <b>Q. (By Mr. Joyce) In your opinion, Geoff</b>    10                  <b>is occupationally disabled from working as a</b>    11                  <b>trackman at the Railroad as to his cervical</b>    12                  <b>condition?</b>    13                  MR. HALL: Objection.    14                  THE WITNESS: Yes.    15                  MR. JOYCE: Those are all the    16                  questions I have. Thank you.    17                  EXAMINATION    18                  <b>Q. (By Mr. Hall) Let me ask you a</b></p>	<p>Page 76</p> <p>saying that the work caused the degenerative disk disease. He's saying that the work was a contributing factor. Is that what you're getting at?</p> <p>MR. HALL: No. You can answer my question. Go ahead.</p> <p>THE WITNESS: All right. I believe that Mr. Crowther would have developed degenerative disk disease to his neck independent of work.</p> <p><b>Q. (By Mr. Hall) All right. And so your opinion is solely that there was an aggravation of a pre-existing, non-work-related condition, is that correct?</b></p> <p>A. That's correct.</p> <p><b>Q. And we talked about aggravation and worsening and we agreed that there are two concepts that are involved there, the worsening or aggravation of symptoms versus aggravation and worsening of the actual disease process, correct?</b></p> <p>A. Correct.</p> <p><b>Q. And from when you evaluated him in March of '06, to when he had his surgery in January of '07, you didn't see a worsening of the</b></p>
	<p>Page 75</p> <p>1                   <b>follow-up, because you told me on the record that</b>    2                  <b>the paragraph regarding your opinion was solely to</b>    3                  <b>an aggravation.</b>    4                  A. Correct.    5                  <b>Q. Do you recall that testimony?</b>    6                  A. Yes.    7                  <b>Q. And so we can agree that his</b>    8                  <b>degenerative disk disease was completely</b>    9                  <b>non-work-related, correct?</b>    10                 MR. JOYCE: Objection.    11                 <b>Q. (By Mr. Hall) The development -- the</b>    12                 <b>original development of his degenerative disk</b>    13                 <b>disease was not related to his job --</b>    14                 MR. JOYCE: Objection.    15                 <b>Q. (By Mr. Hall) -- is that correct?</b>    16                 MR. JOYCE: I think that that --    17                 <b>Q. (By Mr. Hall) Is that correct?</b>    18                 MR. JOYCE: -- testimony speaks for    19                 itself.    20                 <b>Q. (By Mr. Hall) You told me that it was</b>    21                 <b>not caused by work, right?</b>    22                 MR. JOYCE: We're not -- there's a    23                 distinction between "caused" and "a    24                 contributing factor" here, Steve. He's not</p>	<p>Page 77</p> <p><b>actual disease process, is that correct?</b></p> <p>A. That is correct.</p> <p><b>Q. And so in terms of his work from that time period, from -- I believe it was March of '06 -- until he went off in January and had surgery, his job didn't change his degenerative disk disease, correct?</b></p> <p>A. It did not appear to change his disk disease, correct.</p> <p><b>Q. And in terms of his symptoms, did you note any increasing symptoms from his -- from the time period of March of '06 until January of '07?</b></p> <p>A. I did not.</p> <p><b>Q. So in terms of his job duties creating any problems, in your opinion, there wasn't any problems created from at least March of '06, until the time he had surgery in '07?</b></p> <p>A. I didn't see any change, no.</p> <p><b>Q. Okay. And you also agree that Mr. Crowther could do some sort of light, medium, or medium-duty work, correct, based on his current condition right now?</b></p> <p>A. No. Only based on his neck. In sum total with his knees and his other issues, I will</p>

<p>1 stand by that he's totally disabled.</p> <p>2 <b>Q. Okay. So you're saying that because</b></p> <p>3 <b>he had neck surgery and he had thumb surgery and</b></p> <p>4 <b>knee surgery, that he can never work any type of</b></p> <p>5 <b>job ever again, for the rest of his life; is that</b></p> <p>6 <b>what you're saying?</b></p> <p>7 A. At the time I last evaluated him I</p> <p>8 thought he was totally disabled.</p> <p>9 <b>Q. So to the extent your partners have</b></p> <p>10 <b>indicated that he could return to a light or</b></p> <p>11 <b>sedentary-type job, you would disagree with them?</b></p> <p>12 MR. JOYCE: Objection.</p> <p>13 MR. HALL: I'll represent to you that</p> <p>14 both the other doctors that have been</p> <p>15 deposed have indicated that he could perform</p> <p>16 some type of work.</p> <p>17 MR. JOYCE: Light duty. They didn't</p> <p>18 say anything about medium duty, Steve. If</p> <p>19 you're going to go there -- you didn't ask</p> <p>20 either one of those doctors yesterday about</p> <p>21 medium duty. You asked them whether or not</p> <p>22 they thought he could perform --</p> <p>23 THE WITNESS: I would defer to them.</p> <p>24 <b>Q. (By Mr. Hall) You will defer to them?</b></p>	<p>Page 78</p> <p>stuff?</p> <p>A. Correct.</p> <p>MR. HALL: Okay. That's all the questions I have.</p> <p>MR. JOYCE: Thank you, Dr. Cowan. (Deposition concluded at 6:50 p.m.)</p>
<p>1 A. Yes.</p> <p>2 <b>Q. And so would that change your opinion;</b></p> <p>3 <b>if you found out that your partners indicated that</b></p> <p>4 <b>Mr. Crowther could do at least light-duty work,</b></p> <p>5 <b>would that change your opinion?</b></p> <p>6 MR. JOYCE: Objection.</p> <p>7 THE WITNESS: Of what?</p> <p>8 MR. HALL: Of your belief that he</p> <p>9 might not be able to perform any type of</p> <p>10 job.</p> <p>11 THE WITNESS: Yes, since my opinion is</p> <p>12 based not only on his neck condition, but on</p> <p>13 his other conditions.</p> <p>14 <b>Q. (By Mr. Hall) So if they would have</b></p> <p>15 <b>released him at least to light-duty work or a</b></p> <p>16 <b>sedentary-type job, that changes your opinion,</b></p> <p>17 <b>then?</b></p> <p>18 A. Yes. I would say, then, if there --</p> <p>19 if I've already said that his neck would not</p> <p>20 totally disable him, then I would have to agree</p> <p>21 that if the other conditions would not totally</p> <p>22 disable him, then he could go back to a sedentary</p> <p>23 position. Yes, that would be fine.</p> <p>24 <b>Q. And you would defer to them on their</b></p>	<p>Page 79</p> <p>Page 81</p> <p><b>CERTIFICATE OF REPORTER</b></p> <p>I, Jonathan P. Lodi, a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that ROBERT SCOTT COWAN, M.D., came before me on December 16, 2008, at New England Orthopedic Surgeons, 300 Birnie Avenue, Springfield, Massachusetts, and was by me duly sworn to testify to the truth and nothing but the truth as to his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon examined upon his oath and said examination reduced to writing by me; and that the statement is a true record of the testimony given by the witness, to the best of my knowledge and ability?</p> <p>I further certify that I am not a relative or employee of counsel/attorney for any of the parties, nor a relative or employee of such parties, nor am I financially interested in the outcome of the action.</p> <p>WITNESS MY HAND this day of , 2008.</p> <p>Jonathan P. Lodi My Commission Expires: Notary Public 8/8/14</p>